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BAGGIANI, MARYSE VERONICA JEAN-  
LOUIS, NAOMI WOLF, FRANK  
VALENTINE, INDIVIDUALLY, AND ON  
BEHALF OF THOSE SIMILARLY  
SITUATED

[Additional Counsel on Signature Page]

13 Attorneys for Defendants  
YOUTUBE, LLC and SUNDAR PICHAI

14 || [Additional Counsel on Signature Page]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

## OAKLAND DIVISION

19 DONALD J. TRUMP, KELLY VICTORY,  
AUSTEN FLETCHER, AMERICAN  
20 CONSERVATIVE UNION, ANDREW  
BAGGIANI, MARYSE VERONICA JEAN-  
21 LOUIS, NAOMI WOLF, and FRANK  
VALENTINE

### **Plaintiffs.**

V.

YOUTUBE, LLC and SUNDAR PICHAI

## Defendants

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27

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**STIPULATION AND [PROPOSED] ORDER**

1 Pursuant to Civil Local Rules, 6-1, 6-2, and 7-12, and the Court's Civil Standing Order,  
2 Plaintiffs Donald J. Trump, Kelly Victory, Austen Fletcher, American Conservative Union,  
3 Andrew Baggiani, Maryse Veronica Jean-Louis, Naomi Wolf, and Frank Valentine, and  
4 Defendants YouTube, LLC and Sundar Pichai (collectively, the "Parties"), by and through their  
5 undersigned counsel of record submit the following Stipulation:

6 WHEREAS, on July 7, 2021, certain of the Plaintiffs filed the Complaint in this action in  
7 the U.S. District Court for the Southern District of Florida, seeking an injunction and damages  
8 against Defendants for alleged violation of the First Amendment to the United States  
9 Constitution and a declaratory judgment that 47 U.S.C. § 230 is unconstitutional, and seeking to  
10 represent a nationwide class (Dkt. 1);

11 WHEREAS, on July 7, 2021, Plaintiff Donald J. Trump and others filed similar  
12 complaints in *Donald J. Trump et al. v. Facebook, Inc. and Mark Zuckerberg*, No. 1:21-cv-  
13 22440 (S.D. Fla.), and *Donald J. Trump et al. v. Twitter, Inc. and Jack Dorsey*, No. 1:21-cv-  
14 22441 (S.D. Fla.), both of which also seek an injunction and damages for alleged violations of  
15 the First Amendment to the United States Constitution and declaratory judgments that 47 U.S.C.  
16 § 230 is unconstitutional, and seeking to represent nationwide classes;

17 WHEREAS, on July 9, 2021, Plaintiffs gave notice to the United States Government  
18 pursuant to Fed. R. Civ. P. 5.1(a) that their Complaint draws into question the constitutionality of  
19 a federal statute (Dkt. 7);

20 WHEREAS, Plaintiffs filed the Amended Complaint on July 27, 2021, reasserting their  
21 First Amendment and Declaratory Judgment Act claims and adding two new claims under  
22 Florida law, including under Florida's recently enacted "Stop Social Media Censorship Act"  
23 (Dkt. 21);

24 WHEREAS, a constitutional challenge to Florida's "Stop Social Media Censorship Act"  
25 is currently pending in the United States District Court for the Northern District of Florida,  
26 which preliminarily enjoined enforcement of the Act by the State Defendants on June 30, 2021,  
27 *NetChoice, LLC v. Moody*, 2021 WL 2690876, at \*11-12 (N.D. Fla. June 30, 2021) (Hinkle, J.),  
28

1 *appeal docketed*, No. 21-12355 (11th Cir. July 13, 2021); the order granting the preliminary  
2 injunction has been appealed to the United States Court of Appeal for the Eleventh Circuit;

3 WHEREAS, on August 16, 2021, Plaintiff Donald J. Trump was granted permission by  
4 Judge K. Michael Moore of the United States District Court for the Southern District of Florida  
5 to file a Motion for Preliminary Injunction of up to 30 pages, excluding the title page, indices of  
6 cases, table of contents, and exhibits, in excess of the default page limits allowed under that  
7 Court's Local Rules (Dkts. 32-34);

8 WHEREAS, on August 23, 2021, Plaintiff Donald J. Trump filed a Motion for  
9 Preliminary Injunction, which was 30 pages in length excluding the title page, indices of cases,  
10 and table of contents, and accompanied by 183 exhibits (Dkts. 43, 45);

11 WHEREAS, on August 31, 2021, Plaintiffs sought waivers of service under Fed. R. Civ.  
12 P. 4(d) from Defendants, which were signed on behalf of YouTube and Mr. Pichai on August 31,  
13 2021, setting Defendants' deadline to answer or otherwise respond to the Amended Complaint at  
14 November 1, 2021 (Dkts. 61-62);

15 WHEREAS, on September 2, 2021, Judge Moore granted Defendants' motion to defer  
16 setting a briefing schedule on the Motion for Preliminary Injunction pending the Court's ruling  
17 on Defendants' forthcoming motion to transfer the case from the Southern District of Florida to  
18 this Court pursuant to 28 U.S.C. § 1404(b) and the forum-selection clause in the YouTube Terms  
19 of Service agreement (Dkt. 56);

20 WHEREAS, on September 2, 2021, Judge Moore stayed the deadline for the United  
21 States Government to intervene in this action pursuant to Fed. R. Civ. P. 5.1(c), pending a ruling  
22 on Defendants' forthcoming motion to transfer (*id.*);

23 WHEREAS, on September 17, 2021 Defendants filed a motion to transfer this action  
24 from the Southern District of Florida to this Court pursuant to 28 U.S.C. § 1404(b) (Dkt. 64);

25 WHEREAS, on October 5, 2021, the parties filed a Joint Scheduling Report in which  
26 they proposed to defer setting a full calendar of case deadlines until after resolution of the  
27 Defendants' pending motion to transfer to the Northern District of California (Dkt. 69);  
28

1           WHEREAS, on October 6, 2021, Judge Moore granted Defendants' motion to transfer  
2 pursuant to 28 U.S.C. § 1404(b) and denied all pending motions, including the Motion for  
3 Preliminary Injunction, as moot in light of the order granting the motion to transfer (Dkt. 70);

4           WHEREAS, the action was transferred to this District on October 13, 2021 (Dkt. 71);

5           WHEREAS, following the recusal of two other Judges of this Court, this case was  
6 assigned to the Honorable Jeffrey S. White on October 21, 2021 (Dkt. 88);

7           WHEREAS, Plaintiff Donald J. Trump has indicated his intention to renew his Motion  
8 for Preliminary Injunction in this Court;

9           WHEREAS, Defendants intend to respond to Plaintiffs' Amended Complaint by filing a  
10 motion to dismiss all claims pursuant to Fed. R. Civ. P. 12(b)(6) and to oppose Plaintiff's  
11 renewed Motion for Preliminary Injunction;

12          WHEREAS, the Parties anticipate that briefing on the Plaintiffs' Motion for Preliminary  
13 Injunction and Defendants' anticipated motion to dismiss will involve multiple complex issues of  
14 law, including a constitutional challenge to a federal statute (47 U.S.C. § 230), as to which the  
15 United States Government may wish to intervene to express its views, and the parties and the  
16 Court will benefit from increasing the default page limits and enlarged time for briefing these  
17 threshold legal issues;

18          WHEREAS, the Parties believe that the presentation of the threshold legal issues raised  
19 by this case will be more efficient if briefing is combined on the Motion for Preliminary  
20 Injunction and Defendants' motion to dismiss.

21          WHEREAS, counsel to the Parties have reviewed the ADR Local Rules and the  
22 Alternative Dispute Resolution Procedures Handbook, and the parties agree that ADR processes  
23 such as Early Neutral Evaluation, Mediation, and/or a Settlement Conference are unlikely to be  
24 beneficial, and that settlement of the case is unlikely;

25          WHEREAS, there has been no previous modification of Defendants' deadline to answer  
26 or otherwise respond to the Amended Complaint;

27          WHEREAS, there is currently no case schedule in place, or any briefing schedule for  
28 Plaintiffs' Motion for Preliminary Injunction; and

1           WHEREAS, the Parties agree that they will benefit from and not be prejudiced by the  
2 schedule contemplated in this stipulation;

3           NOW, THEREFORE, the Parties hereby stipulate and respectfully ask the Court to enter  
4 the attached proposed order, which provides that:

5           1.       Defendants' deadline to answer or otherwise respond to the Amended Complaint  
6 shall be extended to December 2, 2021.

7           2.       Plaintiffs' Preliminary Injunction Motion (Dkt. 43) shall be considered refiled in  
8 this Court as is, namely 30 pages in length, excluding title page, indices of cases, table of  
9 contents, and exhibits, after being denied as moot in the Southern District of Florida;

10          3.       Defendants' deadline to oppose Plaintiffs' Preliminary Injunction Motion shall be  
11 December 2, 2021.

12          4.       Defendants shall file their opposition to Plaintiffs' Preliminary Injunction Motion  
13 and their anticipated motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) in a single combined  
14 brief, not to exceed 35 pages, excluding title page, indices of cases, table of contents, and  
15 exhibits.

16          5.       Plaintiffs' shall file their Reply in support of their Preliminary Injunction Motion,  
17 along with their opposition to Defendants' anticipated motion to dismiss, in a single combined  
18 brief, not to exceed 35 pages, excluding title page, indices of cases, table of contents and  
19 exhibits, by January 12, 2022.

20          6.       Defendants shall file their reply in support of their anticipated motion to dismiss,  
21 not to exceed 20 pages, excluding title page, indices of cases, table of contents, and exhibits, by  
22 February 4, 2022.

23          7.       Any hearing on the Motion for Preliminary Injunction and/or motion to dismiss  
24 shall be held at the earliest available hearing date on or after February 18, 2022.

25          8.       The Parties' deadlines to prepare a case management statement and a conference  
26 pursuant to Local Civil Rule 16 and Federal Rule of Civil Procedure 26, any calendared dates for  
27 a conference with the Court regarding discovery, and any ADR deadlines shall be stayed pending  
28

1 this Court's resolution of the Motion for Preliminary Injunction and Defendants' forthcoming  
2 motion to dismiss.

3 Respectfully submitted.

4 Dated: October 28, 2021

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14 Attorneys for Defendants  
15 YOUTUBE, LLC and SUNDAR PICHAI

16 Dated: October 28, 2021

17 LAW OFFICE OF ANDREI D. POPOVICI, P.C.

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## **ATTORNEY ATTESTATION**

I, Brian M. Willen, am the ECF User whose ID and password are being used to file this document. In compliance with N.D. Cal. Civil L.R. 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from each of the other Signatories.

By: /s/ Brian M. Willen  
Brian M. Willen

## [PROPOSED] ORDER

PURSUANT TO STIPULATION OF THE PARTIES, IT IS SO ORDERED THAT:

1. Plaintiffs' Preliminary Injunction Motion (Dkt. 43) in its present form, namely thirty (30) pages in length, excluding title page, indices of cases, table of contents, and exhibits, shall be considered re-filed in this Court after being denied as moot in the Southern District of Florida.

2. Defendants' deadline to answer or move to dismiss the Amended Complaint is extended to December 2, 2021.

3. Defendants shall file their opposition to Plaintiff's Motion for Preliminary Injunction and any motion to dismiss the Amended Complaint, in a single brief not to exceed 35 pages excluding title page, indices of cases, table of contents, and exhibits, by December 2, 2021.

4. Plaintiffs shall reply in further support of the Motion for Preliminary Injunction and oppose Defendants' motion to dismiss the Amended Complaint, in a single brief not to exceed 35 pages excluding title page, indices of cases, table of contents, and exhibits, by January 12, 2022.

5. Defendants shall reply in further support of the motion to dismiss the Amended Complaint, in a brief not to exceed 20 pages excluding title page, indices of cases, table of contents, and exhibits, by February 4, 2022.

6. Any hearing on the Motion for Preliminary Injunction and/or Defendant's motion to dismiss the Amended Complaint shall be set for the earliest available hearing date on or after February 18, 2022. The Court will schedule a hearing, if necessary, by a separate order.

7. The Parties' deadlines to prepare a case management statement and to confer pursuant to Local Civil Rule 16 and Federal Rule of Civil Procedure 26, along with any ADR deadlines, are hereby STAYED pending resolution of the Motion for Preliminary Injunction and Defendants' forthcoming motion to dismiss the Amended Complaint.

Dated: October 29, 2021

*Jeffrey S. White*  
HON. JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE